

RULES COMMITTEE
of the
Suffolk County Legislature

Minutes

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A regular meeting of the Rules Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on **September 23, 2004**.

Members Present:

Legislator Allan Binder • Chairman

Legislator Michael Caracciolo • Vice•Chair

Legislator Daniel Losquadro

Legislator Jon Cooper

Legislator William Lindsay

Also in Attendance:

Mea Knapp • Counsel to the Legislature

Alexandra Sullivan • Chief Deputy Clerk/SC Legislature

Ellen Martin • Aide to Legislator Binder

Linda Bay • Aide to Presiding Officer Caracappa

Bill Faulk • Aide to Presiding Officer Caracappa

Terrence Pearsall • Aide to Legislator Lindsay

Kevin LaValle • Aide to Legislator Losquadro

Jim Spero • Director/Budget Review Office

Ben Zwirn • Assistant County Executive

Emi Endo • Newsday

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Minutes Taken By:

Alison Mahoney • Court Stenographer

(*The meeting was called to order at 4:03 P.M.*)

CHAIRMAN BINDER:

Everyone stand for the Pledge of Allegiance led by Legislator Losquadro.

Salutation

All right, we're going to move forward. Okay, let's see how fast we can get this done. The Rules Committee will come to order. Anyone who wants to speak before the committee? No, thank you.

Okay, we'll move now to 1239 on the agenda, a Charter Law •• well, it doesn't matter, we know what that is because it's been here. And I don't know if there's going to be a motion because we already moved forward with this. Is there a motion to report?

If not, we'll move on to **1520•04 • Adopting Local Law No. 2004, a Local Law to amend the voting policy of the Airport Lease Screening Committee (Schneiderman)**. I would make a •• I don't know •• well, okay, sorry. Ben, that's what you're here for, I was wondering; there must be others, too

MR. ZWIRN:

Yes. I had an opportunity to talk with Counsel on this item and on 1687 which is also before the committee. And at the last Rules Committee there was a vote started on these and there was a motion to approve, there was a second, and then after the first two votes were recorded the voting stopped, and I asked Mea before the meeting because I had some concerns about it. As I went through the rules of the Legislature, there's nothing that really takes into account a half vote; I mean, it wasn't tabled, it wasn't tabled subject to call.

CHAIRMAN BINDER:

Let me explain, I'll explain. In the Rules Committee, the way we set up •• because really each committee has its kind of own operating rules. We don't approve bills here and we don't want to be on record as approving because you can vote to report something and not to support it here. We only vote to report. There's no tabling because if it's not reported to the full

Legislature it's still here, in other words it stays on •• it literally will stay on the agenda if something doesn't get reported; it doesn't get defeated, there's no •• because we're not voting on the merits; the point of the Rules Committee is there's not vote on the merits. Let's say it doesn't have enough votes, to say that it was defeated here and then it goes to some obscure _labrayer_ tar pit, it would be to undermine the main committee that actually sent it here, they vote on the merits. So when it came here we were looking at other things for other reasons, and I don't why this didn't make it, I will hope it would make it but I need three votes to report it out, otherwise it just doesn't get reported and that's why it goes into •• it doesn't go to never land, it just stays on this agenda until it gets reported, that's how it works.

MR. ZWIRN:

So this is the twilight zone.

CHAIRMAN BINDER:

It could be, it could be. But the thing is that it doesn't get defeated because we're not voting to approve.

MR. ZWIRN:

So it would stay on the agenda?

CHAIRMAN BINDER:

It stays on the agenda, if it's not reported it's here, if it gets reported it's out and that's exactly how it works; there's no motion to table, it doesn't exist.

MR. ZWIRN:

Just one other question; the six month rule, what would happen if a bill gets here and it's usually six months it would expire, unless it's on the floor of the Legislature.

CHAIRMAN BINDER:

Right.

MR. ZWIRN:

What would be •• would this be equivalent to being on the floor of the Legislature?

CHAIRMAN BINDER:

No, it hasn't made it to the floor from here. So I would defer to Counsel if she differs with me, but if it stays in here and at six months it would be gone, whatever bill •• you know, it's not like making it to the floor. Do you see it differently?

MS. KNAPP:

The rule actually, interestingly enough that you raise that, the rule talks about being discharged from committee within six months.

CHAIRMAN BINDER:

Oh, okay, that's interesting.

MS. KNAPP:

It does.

CHAIRMAN BINDER:

I hadn't thought of it that way, okay.

MS. KNAPP:

And to the extent •• I should find the rule, but I'm quite sure of that because I've had occasion to look at it before. Let me see if it's got any better guidance there. It does talk about being discharged from committee.

CHAIRMAN BINDER:

Well, why don't we deal with that as a separate subject and move forward because this is not a six month rule question on this one anyway. But interesting question and why don't we leave that and Counsel can research. I gave you my opinion but not a ruling because I would think that Counsel should research how that would work because I haven't looked at the language. But at this point, that's how we do the committee and the committee doesn't have •• we don't approve, we just report, so that's where we are.

MR. ZWIRN:

Okay.

(*Legislator Caracciolo entered the meeting at 4:08 P.M. *)

CHAIRMAN BINDER:

Okay, so we're at 1520. So let me ask Counsel if there are any questions on 1520 as to legality.

MS. KNAPP:

There are no legal questions, certainly, no.

CHAIRMAN BINDER:

Okay, there are no legal questions; I think we heard that the last one. I'll make a motion to report.

LEG. COOPER:

Second.

CHAIRMAN BINDER:

Second by Legislator Cooper. All those in favor? Opposed?

1520 is reported out (VOTE: 5•0•0•0).

All right, ***1637•04 • Adopting Local Law No. 2004, a Local Law to authorize the establishment of fees in the Department of Health Services, Division of Medical•Legal Investigations and Forensic Sciences for requests for cremation approvals and autopsy reports (Presiding Officer at the Request of the County Executive).*** I'm going to make a motion, or does anybody else want to make a motion to report.

LEG. LOSQUADRO:

I will make a motion.

CHAIRMAN BINDER:

Motion to report by Legislator Losquadro, second by Legislator Cooper. I can vote on this even if it's not kosher to cremate, right? No, it was a bad joke, okay. We have a motion to report and a second. Is there a question on legality here? I would assume not; none?

MS. KNAPP:

None.

CHAIRMAN BINDER:

Okay. All those in favor? Opposed? ***1637 is reported (VOTE: 5•0•0•0).***

1687•04 • Adopting Local Law No. 2004, a Charter Law to clarify delegation of responsibility during absence or disability of County Executive (Binder). It is now my bill and I'm not going to make a motion. So I would ask ••

LEG. COOPER:

Well, before I make the motion, I just have a question for Counsel.

CHAIRMAN BINDER:

Oh, you want to make a motion?

LEG. COOPER:

Before I make the motion ••

CHAIRMAN BINDER:

Oh.

LEG. COOPER:

•• I have a question.

CHAIRMAN BINDER:

Okay.

LEG. COOPER:

I just want to confirm that the responsibility does not delegate to the chair of the Rules Committee. I haven't read your bill, Allan, I want to read the fine print.

MS. KNAPP:

An Alexander Hague situation, is that ••

CHAIRMAN BINDER:

No, the answer is it most certainly doesn't, it just clarifies what it means to be absent.

LEG. COOPER:

Okay.

CHAIRMAN BINDER:

All it does is •• it's just nebulous, what does it mean. And it's not pointed at any one particular thing or anything that's •• when Legislator Crecca, or former Legislator Crecca who now is staff and has to call us Legislator, by the rules •• when former Legislator Crecca had written this, the clear intent of it was to just define it because it just was never clear as to what we meant to being absent, was he absent because he's just indisposed or he's out of the County, he's out of the country, what does it mean; okay?

LEG. COOPER:

I'll make a motion to report.

LEG. CARACCILOLO:

Second.

MR. ZWIRN:

Before you ••

CHAIRMAN BINDER:

Okay. Motion to report by Legislator Cooper, second ••

MR. ZWIRN:

I just would like to reiterate the County Executive's ••

CHAIRMAN BINDER:

I just have to take this, in one second I'll recognize you.

Second by Legislator Caracciolo. Mr. Zwirn, go ahead.

MR. ZWIRN:

Thank you, Mr. Chairman. I just want to reiterate the County Executive's firm opposition to this as infringing upon his way of running the County. Through the committee's hearings and before this committee, we really never got really what we thought was a good explanation as to

why this bill was necessary. The County is running very well, I think nobody •• even former Legislator Crecca who sponsored this bill, would admit that the County Executive works extremely hard. And for him to be able to delegate authority from his Chief Deputies so that he can continue to do the good work for the taxpayers and residents of this County, all this does is try to infringe upon on the way he performs his duties. And I think, you know, in all fairness, even though I work for the County Executive and for the people of Suffolk County, he's working hard and doing his job. And the fact that the Chief Deputy has signed a number of the bills into law, I don't think there's any indication that the County taxpayers are getting cheated in any way.

CHAIRMAN BINDER:

Let me say something first, and then I'm going to throw it out to the committee; I'm trying to bite my tongue but it's very hard.

Ben, I have to tell you something. To hear your concern about us infringing, when I read a memo from our Budget Director and I see that we've passed laws, overrode the County Executive, and the decision of the County Executive is, "I don't like that they overrode me, I think it's not legal what they did," for whatever reason •• maybe he's right, I don't know if he's right or wrong •• but he just decides to be judge and jury as to the legality of legislation that this Legislative body, Republicans and Democrats •• by the way, some of which I would support him on, I would support him in his position, in the general position on the legislation itself because I didn't support, let's say, the raises or something. But to say that the body is not significant or not important because, you know, if I decide that I don't like the law and I don't think they did as right, instead of going to the courts, decides on his own, just on his own memo, not to enforce the law that this •• and I'm astounded. In 15 years in this Legislature, working for State Senator, working for members of Congress, the time I've been in government, astounded that a Chief Executive would do that; talk about infringing upon the powers of an institution, a body, coequal branch of government.

So to hear your concern that what we want to do is just define what it means to be absent, and not just for this County Executive, it's not to say •• yeah, we're obviously not happy that Mr. Sabatino has signed most of the laws that have been passed in Suffolk County; I don't know

that's a good thing, I probably don't think it's a good thing, but beyond that, that's not even really the question and concern. The real concern is if you have a law that's nebulous on the books, it doesn't infringe upon him, it just defines when he's out, who has to •• then someone can sign. What does it mean for him to be out so he knows, it gives him a guideline to say these are the times under law that you have someone sign it and these are the times that you don't. All it does is define, it creates a definition, not anything that hamstrings him, it creates a definition; in fact, what it does by clarifying it is probably a good thing. But it's very upsetting to hear just as a statement, you know, the concern about infringement when, you know, what's happening now is I think an attack on the institution to make us completely insignificant as a body by just deciding on his own that he's not going to enforce law, and that's upsetting.

So before you comment on mine, because you'll have plenty, let me let the other Legislators; mine was a comment and I'm sure you'll have plenty to say about it. Let the other Legislators, I'm trying to remember who went first, I think Legislator Cooper jumped in first and then Legislator Caracciolo.

LEG. COOPER:

I just wanted to say, Ben, for the record, as Legislator Binder had explained earlier, my motion to report the legislation in no way is an indication that I am necessarily supportive of the legislation or that I will be voting for it when it comes before the full Legislature. It's just under the rules of the Rules Committee, this committee is not supposed to serve as a roadblock per se, and unless there's a serious legal problem with the resolution before us, we're sort of obligated to report it out of committee, the ground rules of the committee.

CHAIRMAN BINDER:

We try to.

LEG. COOPER:

We try to to the extent that we can. So in this case, there being no legal question about the validity of the resolution, I'm obligated to support reporting it out of the committee. But it meant nothing more than that and I most likely will be opposing this before the full Legislature, but in any case, that's really a separate issue.

CHAIRMAN BINDER:

Legislator Caracciolo.

LEG. CARACCILOLO:

Thank you, Mr. Chairman. Mr. Zwirn, the Chairman has raised really a secondary issue which I'll reference in a moment, but first to the resolution before us. Do you have a •• does he have a specific objection and what is it?

MR. ZWIRN:

Yes.

CHAIRMAN BINDER:

You mean to the language?

LEG. CARACCILOLO:

As to the definition, you know, defining ••

MR. ZWIRN:

What the duties that are spelled out and we had some concern that the Chief Deputy couldn't sign the personnel forms which we commonly call SCIN forms which is now delegated to one of the Chief Deputies, signing the resolutions. You know, as I pointed out to former Legislator Crecca, the County Executive need not sign any of the resolutions that pass into law and they'll pass into law without his signature, so the fact of who signs it or when it was signed seemed to be an argument that was not really well founded. It seemed to me that this was just a shot at this particular County Executive and his staff and the way he runs the Executive Branch as opposed to anything else, because it has not been done before.

LEG. CARACCILOLO:

Is there something that he finds objectionable to it on the basis of the substance of it or what?

MR. ZWIRN:

He doesn't think that he can delegate the authority to his Chief Deputies that he has presently done, signing resolutions, SCIN forms, memorandums, budget memorandums, things of that which he has delegated to other members of his staff.

LEG. CARACCILO:

Has anyone challenged his right to do that; I mean, has anyone taking a lawsuit and said that what he's done is illegal or inappropriate?

MR. ZWIRN:

Well, I think that's what the purpose of this legislation is, to lay the groundwork for that; nobody has done it yet because he hasn't done anything that's inappropriate.

LEG. CARACCILO:

Okay. To the second issue that came up in the conversation regarding how the County Executive has declined, and I'll be polite, to enforce resolutions that have been approved by the Legislature as noted as a coequal branch of government; how does he justify that position?

MR. ZWIRN:

I think they •• and I just briefly saw the budget memorandum that I think was sent, Jim, I think it came to you or to Counsel or wherever it was sent. I think it was self•explanatory and as the Chief Budget Officer of the County, I think he felt compelled to act. And I don't think it's in any way •• you know, I know people may take it differently, but I don't think it's to show disrespect or to say that the Legislature is insignificant; if it was then we wouldn't be here today. I mean, I wouldn't be here sitting here, you know, engaging in conversation and dialogue with the Legislature. He takes the Legislature very seriously, he considers it an excellent body, you've passed excellent legislation over the years and, you know, the County Executive comes from this body. So I think to say that it's disrespectful, I think he thinks he's doing his job, I believe he thinks he's doing the right thing for the taxpayers of the County and acting in a legal manner.

LEG. CARACCILO:

But how does ••

MR. ZWIRN:

You may disagree with what he has done or his policies, but I think certainly it's done in good faith and based on law.

LEG. CARACCILO:

The reference you're making to that document is a multi page document, and I don't have a copy handy, but ••

MS. KNAPP:

We can get it.

LEG. CARACCILOLO:

Yeah, if we can get a copy of that.

MS. KNAPP:

And get the reply memorandum?

LEG. CARACCILOLO:

Yes. But before you do that, Counsel, what is your posture on this, the insistence of the Executive that he could just ignore the actions of the Legislature, and what recourse do we have?

MS. KNAPP:

Since you asked me.

LEG. CARACCILOLO:

Well, I'm surprised no one else has raised this issue, because I for one do not appreciate being ignored no more than he would appreciate being ignored.

MS. KNAPP:

Having practiced law for a little over 20 years and having been in government service since 1989, most of that time as a municipal lawyer, it is Black Letter Law that when a resolution or a Local Law is duly enacted, the definition being approval by the Legislative body and signature by the County Executive or in the absence in a veto override by the Legislative body, you have law. You enjoy •• I mean, everybody on this horseshoe has smiled at my response sometimes when I say that when it's duly enacted it enjoys a presumption of validity, but that comes out of a long line of New York State Court of Appeals cases and it is, in fact, the law, it enjoys a presumption of validity. As I often say, if you're not wearing a black robe and sitting behind a bench, I don't care what your opinion is after it's duly enacted; only a judge can nullify a duly

enacted law or resolution of an elected body.

LEG. CARACCIOLO:

To take that to the next step, what recourse would the Legislature have to require the Executive to enforce those duly enacted resolutions? Even those that he may not have put his signature to, they are pocket approval ••

CHAIRMAN BINDER:

The overrides are the ones; most of them are overrides.

LEG. CARACCIOLO:

Okay, but there are some that are not, I mean, most of them have to do with budget and things like dredging and so forth. Is that the memo there?

MS. KNAPP:

Yeah.

LEG. CARACCIOLO:

Okay. At this point, you know, the Legislature, 18 duly elected officials have, by a majority vote, stipulated actions to be taken by County government which are being ignored by the Executive. What actions can we take individually or collectively? I mean, Mr. Levy at one time as a County Legislature, I think on a couple of occasions, took legal action against County government, and in particular the County Executive, when he felt the law was not being carried out; or with relation to cap laws, I remember he took an action when he felt there was an abuse along those lines. And Mr. Spero, if you could just refresh my memory about that since it was a budget issue, do you recall what the specific instance was that Mr. Levy challenged the County Legislature.

CHAIRMAN BINDER:

And the Executive.

LEG. CARACCIOLO:

Well, both, it was both because it was a majority vote of the Legislature he didn't agree with, he felt that ••

MR. SPERO:

Are you talking about the Judge Underwood decision ••

LEG. CARACCILOLO:

Yes.

MR. SPERO:

•• from way back in 1987?

LEG. CARACCILOLO:

Yeah.

MR. SPERO:

That was a lawsuit that revolved around the fact, I believe, that the budget didn't conform to the budget caps and then we had to cut like \$20 million at the end of the fiscal year to make the budget conform to that.

LEG. CARACCILOLO:

Now, I applaud Mr. Levy for having the conviction and fortitude to bring that action and I believe he prevailed on that action.

MR. SPERO:

That's correct, because the County was compelled to cut about \$20 million in appropriations at the end of the fiscal year.

LEG. CARACCILOLO:

Right. And all I'm really drawing a parallel here to is we now have a number of duly enacted County resolutions that are being ignored by the County Executive.

MR. ZWIRN:

Well, I'll talk ••

LEG. CARACCILOLO:

Go ahead, I'm happy to hear your response.

MR. ZWIRN:

No, just for a second. He's not ignoring them but he's acting on them; he's the Chief Budget Officer of the County. And there have been instances where the Legislature has directed the County Executive to do things which have been litigated, under the Halpin Administration he was directed to hire certain personnel, it went all the way to the Court of Appeals and it was decided that the County Legislature could not direct the County Executive ••

LEG. CARACCILOLO:

But it went to the court.

MR. ZWIRN:

It went to the Court of Appeals. But it has been •• this has been done before where the Legislature has directed the County Executive ••

LEG. CARACCILOLO:

But do we want to operate government in Suffolk County that when we have these differences that one level of government or the other sues the other, as we now see is •• well, not a commonplace occurrence but you've had this in the last several years in the State Legislature over budgets.

MR. ZWIRN:

No, I don't think that the County Executive is looking to, you know, wind up in court on this. Is he afraid to wind up in court? No, he thinks he's on solid ground or he wouldn't have acted the way he has.

LEG. CARACCILOLO:

That's not the way taxpayers expect their elected officials to act.

MR. ZWIRN:

I think his actions are on behalf of the taxpayers as his role as chief budget officer of this County, that he does not want to expend funds that don't have an appropriate offset or with the Capital Project, with the dredging to make sure that's done; he didn't say it was impossible to do but he said the way it was done was illegal in his opinion and, therefore, he's acted the way he has. He said it before in the veto message, the veto message was overridden but that still

doesn't change the facts as he sees them. In most cases where the vetoes have been overridden the County has moved on, but in these particular instances the County Executive in that roll has acted in what he thinks is the appropriate manner. And I think the Legislature takes it •• he's not doing it to show disrespect to the Legislature, he's doing it because he thinks it's to hold his office to the standard that the taxpayers expect him to do.

LEG. CARACCILO:

Okay. So then we need a third party, the court, to tell him and us what his powers are and if he's overstepping his powers or if he's within his powers. I for one would like ••

MR. ZWIRN:

Well, if you find his comments and his arguments in the memo persuasive, then you take whatever action you deem appropriate.

CHAIRMAN BINDER:

Okay.

LEG. CARACCILO:

It's silly, silly; it's not the way the public expects their public officials to do business on their behalf.

CHAIRMAN BINDER:

You know, just an aside. I cannot imagine that if Congress passed a law and the President said, "You know what, that appropriation, it violates whatever I think, I think; me, I'm the President so I think that Congress violated," that he would on his own just say, "I'm not going to do it because I'm the commander in chief, I'm the Chief Budget officer of the United States."

MR. ZWIRN:

President Bush has done it••

CHAIRMAN BINDER:

He wouldn't do it.

MR. ZWIRN:

•• with some of the treaties that the Senate has ratified, he just took the United States out unilaterally, so.

CHAIRMAN BINDER:

He wouldn't do it.

MR. ZWIRN:

I don't know if that's a good example.

CHAIRMAN BINDER:

He wouldn't do •• he wouldn't do it.

MR. ZWIRN:

He did.

CHAIRMAN BINDER:

Well, I disagree. I disagree, he hasn't taken us, and I know which one you're talking about.

LEG. COOPER:

Now we've really digressed.

CHAIRMAN BINDER:

Just I can't imagine this, this is beyond belief.

LEG. CARACCILO:

This is another topic for another day and perhaps another forum.

CHAIRMAN BINDER:

Right. It could be a resolution and it could be and maybe it should be a resolution to let the court make the decision, which the County Exec probably should have gone to in the first place to decide rather than him deciding, he should have let a court decide.

LEG. CARACCILO:

Now, let me just add as a post script.

CHAIRMAN BINDER:

And then we'll move on.

LEG. CARACCILOLO:

Yeah. The Executive was elected Executive, County Executive, not County Dictator Executive.

CHAIRMAN BINDER:

Okay. So we have a motion and a second to report. All those in favor? Opposed? **1687 is reported (VOTE: 5•0•0•0).**

1702•04 • Adopting Local Law No. 2004, a Local Law to prohibit the sale, purchase and use of alcohol without liquid (AWOL) machines or alcohol vapor devices in Suffolk County (Cooper). Motion by Legislator Cooper to report, second by Legislator Losquadro. All those in favor? Oh, is there any legal question? Sorry, I'm jumping ahead.

LEG. LINDSAY:

Do we get to try?

CHAIRMAN BINDER:

All right, I think we'll only report it with the condition that Legislator Lindsay gets an opportunity to make sure that it is as bad as they say. I don't think they're going to give one to Legislator Cooper so I don't think you can arrange it, but there might be someone else here. All right, all those in favor? Opposed? **1702 is reported (VOTE: 5•0•0•0).**

1736•04 • Adopting Local Law No. 2004, a Charter Law consolidating the County's Affordable Housing/Workforce Housing Programs and Community Development Agency within the renamed Department of Economic Development and Workforce Housing (Presiding Officer at the Request of the County Executive). I'm going to make a motion for 1736.

LEG. CARACCILOLO:

Motion to table.

CHAIRMAN BINDER:

There's no motion to table, it's just a question if there's a motion. Is there a motion to report?

LEG. LINDSAY:

Motion.

CHAIRMAN BINDER:

Motion by Legislator Lindsay. Is there a second?

LEG. COOPER:

Second.

CHAIRMAN BINDER:

Second by Legislator Cooper. Is there •• well, I don't know about legal question. My understanding is, and we're going over it in the budget and we're talking about it, I was talking with Jim a little bit about it to see what's going on and trying to look at how this fits in. And I think we're going to have to take a closer look at how this fits in the budget.

With all I've just saw, particularly after this briefing, I don't know if this is appropriate on the floor before we have a much better look at how we fit into the budget schemer. I think something has to be done and I just don't know the way to do it and I don't know if it's appropriate yet to have this on the floor. Legislator Lindsay.

LEG. LINDSAY:

This bill came before the Budget Committee earlier today and it was discharged without recommendation because of some questions about it. The testimony we got at that time from, I guess it's Commissioner Morgo, is that the right title?

MR. ZWIRN:

That's correct.

CHAIRMAN BINDER:

Which one? It came out from Affordable Housing, not Budget, Affordable Housing Ad Hoc.

LEG. LINDSAY:

Right, I'm sorry, Affordable Housing Ad Hoc, you're right, not Budget. And, you know, the

testimony was that this is not going to add any positions to the budget, it's a consolidation. But the instant issue here is the legality of the bill is what we're charged with ••

CHAIRMAN BINDER:

Well, it's not ••

LEG. LINDSAY:

•• and if it isn't illegal we should follow through with the same as the other committee and discharge it without recommendation, or go along with it.

LEG. COOPER:

Then table it before the full Legislature.

CHAIRMAN BINDER:

Well, in answer to that, I would also say that legality is one of the tests and one of the questions. It's not literally the only •• we're not only here is it a legal bill. Also the question is is it an appropriate bill to have on the floor at the timing that it's on? I mean, it's also a question of timing. I have said it here, let's say there were four controversial bills and we'd know that the place is going to be packed end to end; one of the things I've said is we probably want to let one or two of those go, and we can control the timing, so that's not a question of legality.

In this case, the same kind of thing, it's the timing of it. I don't know that the timing is right and I think the timing is wrong when we just got a budget, we're just looking at it, we're looking at I think consolidations that were already questioned. And until we understand how this fits in with what we're doing on a separate track, that is my own opinion, that I don't know, I don't think that this is the right time to be putting this on the floor, because there's a lot of questions with consolidations already that we're looking at the budget.

LEG. LINDSAY:

I do respect, I disagree.

CHAIRMAN BINDER:

Okay.

LEG. LINDSAY:

And why I disagree is because I think if we're creating a new department or if we're consolidating a department, I think it's a two step process; number one is to create it or consolidate it legislatively and, two, to appropriate the proper funding for it in the budget.

CHAIRMAN BINDER:

Well ••

LEG. LINDSAY:

And I think one can't happen without the other.

CHAIRMAN BINDER:

Right, I just •• it's the question of which, the chicken or the egg in this case. And I think the other has to be moving and understood before we should be doing this, so that's what I hold. Legislator Cooper.

LEG. COOPER:

I just feel that we should give the benefit of the doubt to all of our colleagues around the horseshoe that they will have the ability on their own to determine whether or not this is the appropriate time to consider the bill. I don't •• I would really be very hesitant for us to keep this bill in this committee and not have them have the opportunity to weigh in on it and debate this on Tuesday. You're certainly •• you have the right to your own opinion, but I disagree, I don't believe that that's an appropriate reason to not report a bill out of committee. It certainly can be tabled on Tuesday and I may end up supporting the tabling motion, but I don't think it's appropriate for us to keep this bill bottled up in committee.

CHAIRMAN BINDER:

Any other comments? If not, all those in favor?

MR. ZWIRN:

May I just say ••

CHAIRMAN BINDER:

Oh, sorry.

MR. ZWIRN:

•• it's a bill that the County Executive supported, it got out of committee, there was some talk about tabling it in committee. It has a great deal of support in the County, it's affordable housing, you have a new Commissioner. It went to public hearing, the public hearing was closed, it's been through committee. We've talked about the budget issues in Affordable Housing, Jim Spero spoke about the fact that there are no positions being lost in Economic Development, and Community Development is moving into this department. You have the new Commissioner ready to go. You know, I knew originally the reasons were legal, there were questions of whether the bills had any legal problems, this is not an issue here. So I, you know, would ask the committee to consider it and at least get it before the Legislature whether they support it or not and you can always have a vote on the merits at the General Meeting, but at least give your colleagues a chance to vote on it at that time.

CHAIRMAN BINDER:

Legislator Losquadro.

LEG. LOSQUADRO:

In all fairness, Mr. Zwirn, serving on the Ad Hoc Committee on Affordable Housing, it was a stalemate; it was 3•3 on the tabling motion, it failed. We did not want to see the bill fail on an approval, it would have been deadlocked 3•3 as well. My concerns on the bill •• I was one who voted to table. My concerns about the bill and the timing of it with entering into the budget cycle, a number of the resolutions that have been placed into this budget to create other departments, I have a number of questions that need to be answered.

I share Legislator Binder's concerns. And I just think that your characterization of what happened in Affordable Housing, that it was, you know, reported out, you know, sort of with their enthusiastic approval is untrue. That we were in a stalemate and this was the only mechanism to which it was not going to be defeated and have to be reintroduced. So I just wanted to be clear on how we characterize how this came out of Affordable Housing and my concerns about the bill have not changed, so I just wanted to get that on the record.

MR. ZWIRN:

I'm not trying to even begin to understand what your particular feelings are on the bill, pro or con. I know you voted to •• as I said, it was discharged without recommendation, that's how you felt when you voted that way, only you can know whether you're against the bill and voted to get it out to the Rules Committee; I don't know and it doesn't really matter. But I'm just saying it's an opportunity here to get it before the entire Legislature so that people can debate this bill again; as I've said, we've had a public hearing that's been closed. And if the main focus of the Rules Committee is to make sure that it meets all the criteria so it can go before the entire Legislature, then I would say let the entire Legislature hear the bill and make their decision. Some of the budget issues had been raised and were answered, I thought, to the satisfaction of the committee.

LEG. LOSQUADRO:

Not mine.

CHAIRMAN BINDER:

Let me ask Counsel, is there a legal question on the bill?

MS. KNAPP:

It's a combination of functions that already exist within the Charter, we've had the public hearing. The only concerns, again, I know that Budget Review talked about •• and I can't, quite frankly, say that I fully understand •• however, there are implications, budget implications to creating a new department.

CHAIRMAN BINDER:

But not legal.

MS. KNAPP:

But there are no legal concerns, no.

CHAIRMAN BINDER:

That's all I need. Okay, 1736, we have a motion and a second.

All those in favor of reporting? Opposed?

LEG. CARACCILO:

Opposed.

LEG. LOSQUADRO:

Opposed.

CHAIRMAN BINDER:

Opposed, three opposed, it will stay on the agenda; ***it's not reported out and it will stay on the agenda for the next meeting (VOTE: 2•3•0•0 In Favor: Legislators Losquadro & Cooper).***

1752•04 • Adopting Local Law No. 2004, a Charter Law to establish a County•wide policy for the protection of children from registered sex offenders (O'Leary). Motion to report by Legislator Caracciolo, second by Legislator Losquadro. All those in favor? Opposed? 1752 •• oh, is there a legal question before I call it? Sorry.

MS. KNAPP:

It just requires that we follow the State law to the maximum.

CHAIRMAN BINDER:

Okay, ***1752 is reported out (VOTE: 5•0•0•0).***

1830•04 • Adopting Local Law No. 2004, a Local Law to impose fines on unlicensed ferry service operators (Carpenter). Any legal questions on that.

MS. KNAPP:

Actually, there was a legal question raised, I amended the bill slightly. What this bill does is allows a fine to be imposed on ferry operators who don't have a license. Right now we impose fines in connection with revocation of licenses, but Legislators saw a hole.

CHAIRMAN BINDER:

Right.

MS. KNAPP:

And the State law allows you to go after them criminally. There was a question raised, and it was a very valid question, about due process and hearings. We've permitted what I would call

minimal due process, in order to avoid having full•blown hearings before the Legislature there is a paper hearing, which I believe the Constitution permits.

CHAIRMAN BINDER:

Okay.

LEG. LOSQUADRO:

Very good.

CHAIRMAN BINDER:

Can I get a motion?

LEG. LINDSAY:

Motion.

LEG. LOSQUADRO:

Second.

CHAIRMAN BINDER:

Motion by Legislator Lindsay, second by Legislator Losquadro.

All those in favor? Opposed? **1830 reported out (VOTE: 5•0•0•0).**

Sense 70•2004 • Sense of the Legislature Resolution requesting the New York State Legislature and the SUNY Board of Trustees to seek out other opportunities for locations for proposed expansion of SUNY Stony Brook and avoid utilizing Eminent Domain Proceedings (Nowick). Do we have a motion.

LEG. COOPER:

Motion.

CHAIRMAN BINDER:

Motion by Legislator Cooper. Second by Legislator?

LEG. CARACCILO:

Not me.

CHAIRMAN BINDER:

I'll second, I'll second to report. All those in favor? Opposed?

LEG. CARACCILO:

Opposed.

LEG. LOSQUADRO:

Opposed.

CHAIRMAN BINDER:

Opposed, Legislator Losquadro, Legislator Caracciolo.

Sense 70 is reported out (VOTE: 3•2•0•0 Opposed: Legislators Caracciolo & Losquadro).

Okay, that's it. Anything else to come before the committee? If not, motion to adjourn by myself, second by Legislator Caracciolo. All those in favor? Opposed? We are adjourned.

(*The meeting was adjourned at 4:40 P.M.*)

***Legislator Allan Binder, Chairman
Rules Committee***

_ _ • Denotes Spelled Phonetically